

REPORT - PLANNING COMMISSION MEETING
April 14, 2005

Project Name and Number: City Beach, Inc. (PLN2005-00067)

Applicant: City Beach, Inc.

Proposal: To consider a Finding and referral of an Amendment to a previously approved Zoning Administrator Permit to allow ancillary live or recorded entertainment in conjunction with an existing recreational facility with a full-service restaurant.

Recommended Action: Approve, based on findings and subject to conditions.

Location: 4020 Technology Place, Industrial Planning Area

Assessor Parcel Number(s): 525-1250-033-03

Area: Lot area—120,241 SF; Building size—43,564 SF

Owner: Nelsen Enterprises, LLC

Agent of Applicant: Cary Riter, City Beach, Inc.

Consultant(s): None

Environmental Review: A Mitigated Negative Declaration has been previously prepared for this project. Because no new impacts have been identified, no further environmental review is necessary.

Existing General Plan: General Industrial

Existing Zoning: G-I, General Industrial

Existing Land Use: City Beach, 43,564 SF amusement and recreational facility.

Public Hearing Notice: A total of 265 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Brook Terrace, Fisk Terrace, Coleridge Terrace, Manitoba Green, Center Drive, among others. The notices to owners and occupants were mailed on April 1, 2005. A Public Hearing Notice was delivered to The Argus on March 28, 2005 to be published by March 31, 2005.

Executive Summary: The Planning Commission is being asked to consider a referral of a Finding of Zoning consistency necessary for an amendment to a Zoning Administrator Permit (ZAP). City Beach (Applicant) has requested an amendment to allow incidental entertainment at their existing amusement and recreation facility located at 4020 Technology Place. The purpose of this amendment is to allow incidental entertainment in the form of live or recorded music (e.g., band or disc-jockey) on three specific days of the week (Thursday, Friday and Saturday) from 9 p.m. to 2 a.m. within a 450 square foot dedicated area inside the facility. This 450 square foot area is specifically for the incidental entertainment and location of amplified music only. The City Beach facility is approximately 43,564 square feet in size and is located in the General Industrial District where amusement and recreational uses may be considered. Staff recommends that the Planning Commission find the proposed incidental entertainment use be allowed, subject to conditions, in conjunction with the existing approved uses, based on project-specific findings, and approve the ZAP Amendment, based on general findings and subject to conditions. The approval of this project will supercede all previous approvals for the project parcel.

Background and Previous Actions: In November 2000, the Zoning Administrator approved Zoning Administrator Permit (ZAP) PLN2001-00058, which permitted an amusement and recreational facility of approximately 43,564 square feet at the subject site. The approved facility consists of indoor volleyball, basketball, rock climbing wall, pool table, video arcade areas, and a full-service restaurant with beer and wine.

In September 2001, the Zoning Administrator approved an amendment (PLN2003-00043) to permit the sale and service of all alcoholic beverages limited to the restaurant area. In June 2003, the Zoning Administrator approved an amendment (PLN2003-00278) to expand the permitted area for the consumption of all alcoholic beverages to these specific areas: restaurant area, pool table area, arcade area, volleyball/basket ball courts, fenced patio area and second floor meeting room. The facility has approval from the State of California Alcohol Beverage Control (ABC) for the sale and service of all alcohol in these areas.

In September 2004, City Beach applied for a Finding and an Amendment to allow incidental entertainment in the form of live (band) or recorded music (played by a disc-jockey) within a 450 square foot area of the facility. The Zoning Administrator has now referred the Finding and Amendment to the Planning Commission for consideration. It should be noted that the project was not scheduled for an earlier date because the applicant requested modifications to the proposal.

Project Description: This project is a Zoning Administrator referral of a Finding and Zoning Administrator Permit Amendment to permit incidental night entertainment in the form of live or recorded music (e.g., live band or disc-jockey) on Thursday, Friday and Saturday nights, from 9 p.m. to 2 a.m., in an area of approximately 450 square feet entirely inside the facility (on the giant size vinyl chessboard floor adjacent to restaurant). The proposed project would require an additional 13 parking spaces as dancing and karaoke are proposed within this area, which are proposed to be met through either an off-site parking agreement or an onsite parking program (by staggering uses offered at the facility).

PROJECT ANALYSIS:

Project-specific Findings: The purpose of the Finding procedure is to provide a general method for making a determination regarding a proposed use which is not specifically listed as a permitted, zoning administrator (staff level approval), or conditional permitted (Planning Commission level approval) use in a certain zoning district. When the approving body finds that the project-specific characteristics of a particular use not listed are similar to another listed use, the approving body may justify that the proposed use should be permitted in the same matter as the listed use, i.e., accessory, permitted or conditionally permitted.

Project-specific findings are proposed below for consideration by the Planning Commission to allow the incidental entertainment use in conjunction with the existing 43,564 square foot City Beach amusement and recreation facility.

1. The proposed additional entertainment use of providing live or recorded music on Thursday, Friday and Saturday nights, from 9 p.m. to 2 a.m., contained within an area of no greater than 450 square feet within the facility is considered an acceptable ancillary use. This use is incidental to City Beach's principal use as a 43,564 square foot amusement and recreation facility that provides indoor rock climbing, basketball/volleyball courts, pool tables and an arcade area, because such use is subordinate and minor in significance and bears a reasonable relationship to and with the facility's primary use, which is permitted in the General Industrial District, consistent with the General Plan.
2. Based on the variety of uses offered and permitted at City Beach (e.g., recreational sports, banquet, restaurant, bar) oriented towards a regional market, the addition of the incidental entertainment use is similar in nature and function to other principal amusement/recreational uses permitted for the facility. There are no other facilities in the City that, in terms of size and scale (43,564 square foot facility), provide a variety of indoor amusement/recreational activities similar to City Beach. Allowing the incidental entertainment use is thus appropriate and warranted.
3. The incidental entertainment use proposed in addition to City Beach's existing permitted uses would be conducted within the integral part of the main structure, appurtenant to City Beach's permitted uses.

General Plan Conformance: The existing General Plan land use designation for the project site is General Industrial. The proposed project is consistent with the existing General Plan land use designation for the project site because amusement and recreational uses may be considered, subject to discretionary review to ensure that the uses can be served by the existing (or planned) roadway infrastructure and would not have a significant adverse impact on existing industrial uses. The following General Plan Goals, Objectives and Policies are applicable to the subject request:

Policy LU 3.3

*"Commercial uses **providing necessary services for industrial uses and workers and large-scale regional retail and amusement uses may be allowed in industrially designated areas**, with the exception of "Light Industrial". All commercial uses are subject to discretionary review to ensure the use can be served by the existing or planned roadway infrastructure and would not have a significant adverse impact on existing industrial uses in regards to parking requirements, traffic volume and other conflicts in operations. **Appropriate non-industrial uses include large-scale, regionally-oriented retail and amusement uses** as well as uses serving industry and employees, such as copying services, branch banks, **eating and drinking establishments**, convenience shopping and gas stations." (Emphasis added.)*

Policy LU 3.4

*"Public and **private recreation facilities and parks may be allowed in an industrial area**". (Emphasis added.)*

The proposed additional incidental entertainment use is in conformance with the policies above because, in conjunction with the facility's current permitted uses, it can be served by the existing roadway infrastructure and would not have a significant adverse impact on existing industrial uses in the surrounding area in regards to parking requirements, traffic volume and other conflicts in operation. There are no other amusement/recreation facilities in the immediate area which are of similar size. City Beach is oriented to the regional market and has convenient access from the I-680 freeway. The facility not only provides services in the form of amusement and recreation for industrial workers, but also the general public. Allowing the incidental entertainment use in addition to City Beach's existing approved uses would be consistent with these General Plan policies.

Zoning Regulations: The project site is zoned G-I, General Industrial. Amusement and recreation uses are permitted in the G-I district, subject to approval of a Zoning Administrator Permit. Incidental entertainment in conjunction with the facility's existing approved amusement/recreational uses, is not specifically listed as either an accessory, permitted or conditionally permitted use in the G-I zone. As such, the Finding procedure is necessary to allow the proposed incidental entertainment use. An amendment is also required to add the use as a permitted use to the Zoning Administrator Permit for the City Beach facility.

Security: In consideration of this request, the Fremont Police Department (FPD) staff recommends that the facility provide at least six (6) State-licensed security guards during the times when the proposed incidental entertainment is provided (Condition 8). Allocation of the six (6) security guards includes two stationed inside the facility, two at the entrance, and two within the exterior parking lot area. While the incidental entertainment area is proposed to be restricted to an area of 450 square feet, the City Beach facility may accommodate up to 1,000 patrons inside the 43,564 square foot facility, as its principal use is oriented to recreational sports (e.g., rock climbing, volleyball and basketball). If a certain event is anticipated to attract more than 300 patrons on a day incidental entertainment is provided, City Beach would be required to provide the FPD a ten (10) working day advance notice (Condition 13). Other security measures as part of this amendment include security and safety lighting, surveillance equipment, and convex mirrors, to improve public health and safety (Condition 21-24).

Parking: City Beach currently provides 153 parking spaces onsite, one more parking space than required under their approved Zoning Administrator Permit (152 parking spaces). Pursuant to Section 8-22003 of the City's zoning code [Required parking spaces by type of use.], the minimum 152 parking spaces was based on a finding by the Zoning Administrator in consideration of exact nature of the land use and related employee density for a 43,564 square foot amusement and recreation facility. The parking was calculated as listed below.

Volleyball Courts (5 hard and 1 sand court)	34
Clubhouse (10,220SF/200)	51
Climbing area (10 spaces + 6,500SF/200)	42
Restaurant (2,500SF/200)	25
Total Required Spaces	152

Although the proposed use is incidental entertainment and would be limited to an area of 450 square feet, staff recommends that 15 additional parking spaces be provided at a ratio of 1 space for 30 square feet. The total required parking with the inclusion of the incidental entertainment use would be, as follows:

450 SF Incidental Entertainment Area (1sp/ 30SF)	15
<u>City Beach's existing required parking</u>	<u>152</u>
Total Required Spaces	167

Total Existing Parking Provided = 153

Additional Parking Spaces Needed = 13 spaces¹

The applicant anticipates that most of the principal activities, such as the volleyball, rock climbing and basketball, would subside after 9 p.m. Thus, parking should become more available after 9 p.m. and later in the evening when City Beach's proposed incidental entertainment use occurs. The applicant will submit a parking program (with staggering uses) and/or seek additional offsite parking through a joint parking agreement with an adjoining property owner to provide the additional 13 spaces. A condition is proposed that such parking program and/or offsite parking agreement be approved by the Zoning Administrator and adhere to the City's parking provisions (Condition 20) prior to issuance of the final permit to allow the incidental entertainment use.

ENVIRONMENTAL ANALYSIS: A Mitigated Negative Declaration (PLN2001-00058, November 2000) has been previously prepared for this project. Because no new impacts have been identified, no further environmental review is necessary.

Response from Agencies and Organizations: Any correspondence received from the public will be forwarded to the Planning Commission.

ENCLOSURES: Exhibit "A" (Site Plan, Floor Plan)
Exhibit "B" (Specific-project Finding, General Findings, Conditions of Approval)

November 2000 Approved Mitigated Negative Declaration PLN2001-00058

EXHIBITS: Exhibit "A" (Site Plan, Floor Plan)
Exhibit "B" (Specific-project Finding, General Findings, Conditions of Approval)
November 2000 Approved Mitigated Negative Declaration PLN2001-00058

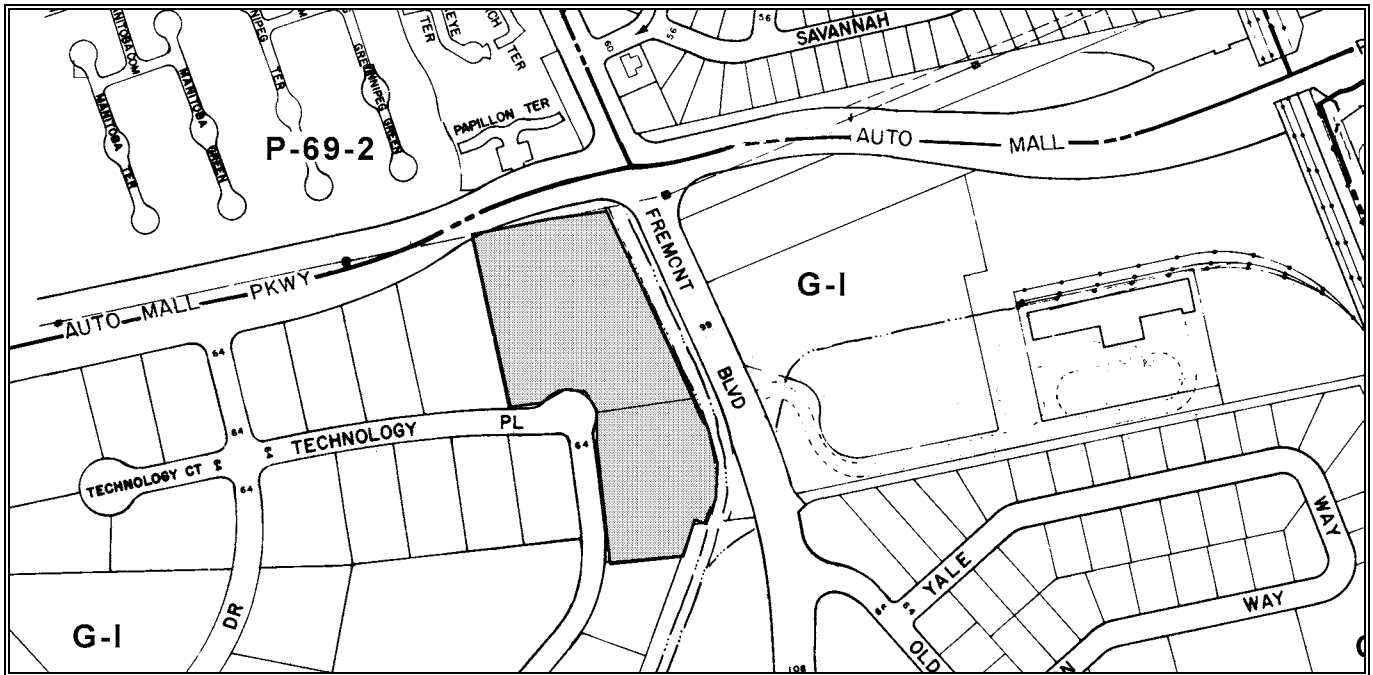
Recommended Actions:

1. Hold public hearing.

¹ 1 space credit provided for the 450SF area proposed to be converted to accommodate the incidental entertainment.

2. Find PLN2005-00067 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
3. Find that Mitigated Negative Declaration PLN2001-00058 (approved November 2000) has been previously prepared for this project. Because no new impacts have been identified, no further environmental review is necessary.
4. Approve PLN2005-00067, as shown on staff annotated Exhibit "A", subject to Findings and Conditions of Approval contained in Exhibit "B".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

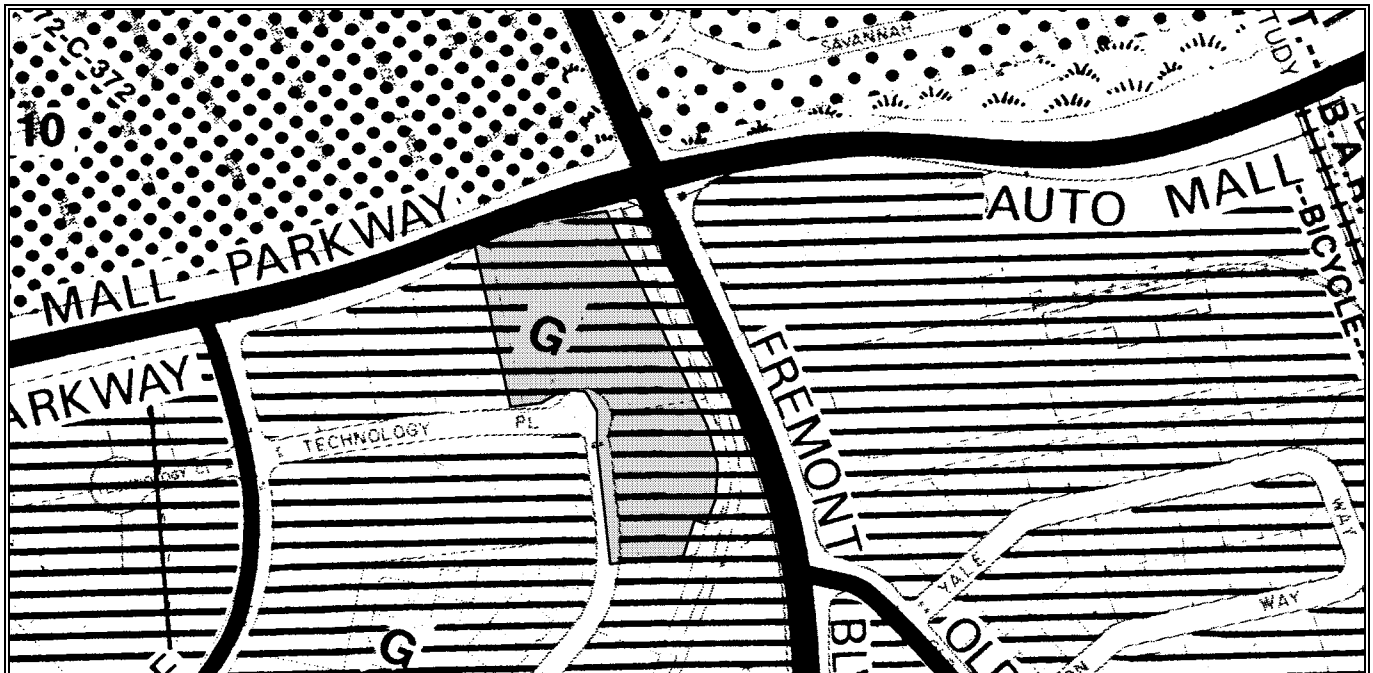


EXHIBIT "B"
City Beach at 4020 Technology Place
PLN2005-00067
Findings and Zoning Administrator Permit Amendment

Findings

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated April 14, 2005, and testimony at the public hearing, incorporated hereby.

Project-specific Findings for consideration of incidental entertainment use at City Beach:

- a. The proposed additional incidental entertainment use of live or recorded music on Thursday, Friday and Saturday nights from 9 p.m. to 2 a.m. is contained within an area of no greater than 450 square feet within the facility is considered an acceptable ancillary use, incidental to City Beach's principal use as a 43,564 square foot amusement and recreation facility that provides indoor rock climbing, basketball/volleyball courts, pool tables, arcade area, and full restaurant and bar because such entertainment use is subordinate and minor in significance and bears a reasonable relationship to the with the facility's primary use, which is permitted in the General Industrial District, consistent with the General Plan.
- b. Based on the variety of uses offered and permitted at City Beach (e.g., recreational sports, banquet, restaurant, bar) oriented towards a regional market, the addition of incidental entertainment use is similar in nature and function to other principal amusement/recreational uses permitted for the facility. There are no other facilities in the City that, in terms of size and scale (43,564 square foot facility), provide a variety of indoor amusement/recreational activities similar to City Beach. Allowing the incidental entertainment use is thus appropriate and warranted.
- c. The incidental entertainment use proposed in addition to City Beach's existing permitted uses would be conducted within the integral part of the main structure, appurtenant to City Beach's permitted use.

General Findings:

- d. The proposed use is consistent with the General Plan designation for the site, since the land use, an amusement and recreation facility is conditionally permitted on property designated General Industrial on the General Plan. The use is oriented to the regional market and convenient access from the I-680 freeway is available. The proposed use is compatible with existing industrial uses and would not impede future industrial development.
- e. The site is suitable and adequate for the proposed use because the proposed operation conforms to ordinance requirements for the zoning district and is subject to conditions of approval that will ensure the use does not have an adverse impact on the site or surrounding industrial and residential uses.
- f. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public facilities or services. Sufficient parking will be provided through a parking program or offsite parking agreement.
- g. The proposed use would not have a substantial adverse economic effect on nearby uses because there are no other similar uses in the surrounding area providing a variety of amusement (including entertainment) and recreational uses.
- h. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large because the facility would be properly regulated to provide adequate parking, and would be subject to operational conditions, limiting impacts on surrounding occupants and/or users.

- i. The design of the project is compatible with existing and proposed development within the district and its surroundings because the proposed project only will not require any improvements to the project structure and site to meet fire and building code requirements, except those improvements required for public health and safety.

General Conditions (Must be satisfied on ongoing basis)

1. Approval of PLN2005-00067 shall supercede and replace all previous Zoning Administrator approvals under PLN2001-00058, PLN2003-00043 and PLN2003-00078.
2. Minor modifications to the Zoning Administrator Permit may be made subject to review and approval of the Zoning Administrator if such modifications are in keeping with the intent of the original approval. The Zoning Administrator, however, may refer any modification to the Planning Commission when s/he feels that the request is of such a nature that it warrants consideration by the Planning Commission.
3. A six (6) month review of this permit from the initial date of its approval shall be conducted by the Zoning Administrator.
4. Approval of PLN 2005-00067 permits the following in conformance with Exhibit "A":
 - a. The unrestricted daily operation of a 43,564 square foot recreational facility, including six indoor volleyball courts, rock climbing wall, pool table and arcade gaming area, 2,000 square foot café and bar and a mezzanine providing for storage, office spaces and training room. No in and out privileges are permitted from 9 p.m. to 2 a.m. on Thursday, Friday and Saturday when the incidental entertainment use is rendered as permitted under 4(c) herein.
 - b. The daily operation from 9 a.m. to 2 a.m. of the ancillary full-service restaurant with bar, including sales and service of all alcoholic beverages in compliance with the State of California Alcohol Beverage Control (ABC) regulations in the areas of the café/bar, pool table area, arcade area, volley ball/basket ball courts, fenced outdoor patio area and second floor meeting room. No in and out privileges are permitted from 9 p.m. to 2 a.m. on Thursday, Friday and Saturday when the incidental entertainment use is rendered as permitted under 4(c) herein.
 - c. Thursday, Friday and Saturday operation of incidental entertainment uses from 9 p.m. to 2 a.m. on the 450 square foot floor dance floor area delineated on the Floor Plan (Sheet 4 of Plan) of Exhibit "A", which includes live and recorded music (e.g., live band or disc-jockey), karaoke, and dancing. No in and out privileges are permitted from 9 p.m. to 2 a.m. on Thursday, Friday and Saturday when the incidental entertainment use is rendered as permitted under 4(c) herein.
5. During the hours of operation (9 p.m. to 2 a.m.) of the incidental entertainment uses when "no in and out privileges" are enforced, the use of wristbands or hand stamps or an acceptable alternative mechanism approved by the Zoning Administrator and Fremont Police Department shall be administered to all patrons attending the facility over the age of 21, to readily identify the patrons that are of legal drinking age. During these hours, all exterior doors shall be monitored in compliance with these conditions.
6. The applicant shall be responsible for all personnel costs and incidental expenses required to enforce these conditions and/or mitigate violations of these conditions. Personnel costs and incidental expenses shall include, but are not limited to Fire and Police personnel, other City personnel and consultant costs, inspection and re-inspection fees, costs incurred in preparation of notices, preparation of specifications and contracts required to abate any nuisance arising from violation of these conditions, and attorneys fees and costs incurred in enforcing these special conditions. The applicant is responsible for all extraordinary Police services directly related to the operation of the facility and uses approved herein.
7. The use at the facility shall not engage and/or render any services as defined in Chapter 10 of the Fremont Municipal Code relating to "Adult Oriented Businesses", unless a valid "Adult-Oriented Business Permit" is

obtained and an approval of an Amendment to this Zoning Administrator Permit is approved by the Planning Commission.

8. During the hours of operation for the incidental entertainment uses under permitted under Condition 4(c) above, private, California-licensed unarmed security guards shall be provided as follows for the facility and its approved uses: a minimum of six (6) security guards on Thursday, Friday and Saturday when the incidental entertainment use is rendered as permitted under 4(c) herein.
9. All security guards shall be unarmed and licensed through the State of California and must comply with Sections 5-5100 -5-5108 of the Fremont Municipal Code. Ultimately, the responsibility is upon the applicant/operator of the facility to provide adequate security at the facility by retaining a sufficient number of security guards during all hours of operation, including the minimum required by Condition 8, above. Such security guards shall be charged with preventing violations of law and enforcing compliance by patrons of the stated prohibitions. The security guards shall be uniformed in a manner distinct in color, style, design and appearance from a city police department or city uniform so as to be readily identifiable as a private security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of State law. The security force shall provide foot patrols in the parking lots and shall be charged with the enforcement of no loitering. Additionally, the security guards may not engage in any entertainment activity provided at the facility or any other services within the premises while on duty.
10. All amplified music and live music shall only occur within the 450 square foot dance floor area identified on Exhibit "A". No amplified or noticeably loud music is allowed outside of the facility, including the exterior patio area identified on Exhibit "A".
11. The number of persons located within the facility may not exceed the maximum occupancy number allowed by the California Building Code.
12. All patrons waiting to gain access into the facility shall wait along the facility's exterior west wall.
13. The applicant or operator shall provide the Fremont Police Department with a ten (10) working day advance-notice of all activities or special events that are estimated to involve more than three hundred (300) patrons. The Fremont Police Department shall be contacted as follows:

By phone: 510.790.6870 (Attention: Watch Commander); and
 510.790.6743 (Attention: Sergeant Howard Russell)
14. The applicant or operator shall not lease or rent the tenant space or a portion of the establishment to an outside promoter and shall not advertise or use a different name for the establishment for the entertainment portion of the facility.
15. All activities shall take place in the interior of the building and no amplification of music or voice is allowed outside, other than security video monitors. In addition, sound as measured at the property line may not exceed a noise performance standard of 70 db(A).
16. Alcoholic beverages (all types) may be served subject to State of California licensing (Alcoholic Beverage Control) requirements. No alcoholic beverages may be served past 2 a.m. No alcoholic beverages may be served outside, except within the patio area identified in Exhibit "A".
17. The applicant shall maintain signs stating "No loitering or consumption of alcoholic beverages" on the exterior of the building and within all parking areas.
18. Parking lot to be posted with appropriate signs per 22658(A) CVC, to assist in removal of vehicles at the manager's request.

19. The operation of the facility shall comply with City's Youth Protection Ordinance. No youths under the age of 18 shall be allowed inside the establishment after 10:00 p.m., unless:
 - a. Accompanied by a parent/guardian;
 - b. Is engaged in employment activity;
 - c. Is involved in an emergency;
 - d. Is attending an official school activity or religious gathering; and,
 - e. Is on an errand for parent/guardian.
20. The applicant shall maintain a total of 153 parking spaces for the use onsite and a minimum of 13 parking spaces through an off-site parking agreement and/or parking program (by staggering uses onsite), approved by the City Attorney and in compliance with the Fremont Municipal Code. Should the Zoning Administrator find that, based on substantial evidence, additional parking is necessary to accommodate the facility's uses, then the owner/operator of the facility shall deploy effective measures to reduce the parking deficiency and/or obtain additional off-site parking in compliance with the Fremont Municipal Code.
21. Surveillance equipment must be maintained within all major corridors and area where the main activities occur. The recorded surveillance tapes shall be kept for a period of no less than three months or 90 days.
22. Security and safety lighting will be conforming to the City Security Ordinance and regulations. All parking lot and exterior lighting shall be maintained at an appropriate level. At anytime, based on substantial evidence that the exterior lighting level is insufficient, the Zoning Administrator and Fremont Police Department shall have the authority to request that the lighting facilities be upgraded or improved. The parking lot is to be well lit, at least one foot candle, during hours of darkness up until one hour past closing time.
23. The project structure and required exiting for egress must comply with all local, state and federal building and fire code requirements.
24. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City's Police Department and/or Zoning Administrator.
25. This report and its conditions as well as this Zoning Administrator Permit issued after successful compliance with the Conditions herein shall be kept on the premises and made available to any officer/employee of the City upon request.
26. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
27. Parking lot landscaping shall be maintained at all times to maximize parking lot observation to ensure the safety of patrons.
28. If the Zoning Administrator finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Zoning Administrator may refer the Zoning Administrator Permit to the Planning Commission for review. If, upon such review, the Commission finds that any of the results above have occurred, the Planning Commission shall modify or revoke the approval of the incidental use.

Prior to Issuance of Zoning Administrator Permit

29. Parking lot lighting shall be upgraded to provide for safe and adequate exterior lighting levels, subject to the approval of the Zoning Administrator and Fremont Police Department.
30. A clearly marked, hands-free emergency phone/panic alarm shall be installed in a conspicuous, central location within the facility.
31. Convex mirrors shall be installed at stairwell landings, alcoves, and other visual obstruction areas, subject to the approval of the Fremont Police Department.
32. An illuminated interior complex map shall be installed and posted on the exterior west wall near the main entrance.
33. The applicant shall provide proof to the Zoning Administrator that a qualified private security firm has been retained and is adequate in satisfying the security measures identified herein under "General Conditions".